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MAR 10 2009

OFFICE OF PETITIONS

In re Application of Preaudat et al.	:	
Application No. 10/522,909	:	Decision on Petition
Filing Date: October 5, 2005	:	
Attorney Docket No. LOM-0047	:	

This is a decision on the petition under 37 CFR 1.181 filed September 25, 2008, requesting the Office withdraw the holding of abandonment.

The petition is **granted**.

On September 24, 2007, petitioner filed an Appeal Brief.

The Office issued an Examiner's Answer on November 28, 2007. The Examiner's Answer did not require petitioner to file a Reply Brief in order to avoid dismissal of the appeal and/or abandonment.

Office internal records indicate that on December 13, 2007, an Appeal Specialist issued a notice informing the examiner that the Examiner's Answer was deficient. The notice indicated the reason the answer was deficient was "c(8) Evidence relied upon should list the reference name, number and date. The correction can be made on pto-90c."

On December 21, 2007, the Examiner issued a three-page document. The first page stated, "The time period for reply, if any, is set in the attached communication." The second page ambiguously stated,

Please find below and/or attached an Office communication concerning this application or proceeding....

Examiner's Answer

(8) Evidence Relied Upon

1. Bazin et al. Homogeneous time resolved fluorescence resonance energy transfer using rare earth cryptates as a tool for probing molecular interactions in biology.

Spectrochimica Acta Part A 2001;(57);2197-2211.

2. Nicholson et al. USPN 4859581 August 22, 1989.

[Handwritten signature of inventor]

The third page of the December 21, 2007, included a copy of page 2 of the November 28, 2007 Examiner's Answer. The copy of page 2 included a handwritten notation of "name, number & date" with a line connecting the phrase to section (8) on the page. The copy of page 2 also included a handwritten notation of "08-22-1989" located by part 2 of section (8).

On September 10, 2009, the Office mailed a Notice of Abandonment asserting the application was abandoned due to a failure to reply to the December 21, 2007 communication.

Petitioner asserts the December 21, 2007 communication did not set forth any time period for response.

The first page of the communication clearly indicated if any time period for reply existed, it would be set forth in the attachment. The attachment did not set forth any time period. Therefore, no time period has been set. An application cannot become abandoned for a failure to comply with a non-existent time limit.

The Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn.

Petitioner has also asserted other grounds for relief other than the failure of the communication to set forth a period for reply. However, since the holding of abandonment has been withdrawn based on the fact the communication did not set a period for reply, the Office need not address the other grounds set forth by petitioner.

Technology Center Art Unit 1657 will be informed of the instant decision in order to allow Darlene Brown or another Appeals Specialist to review the case and to determine the next step to be taken by the Office.

Telephone inquiries regarding this communication should be directed to Petitions Attorney Steven Brantley at (571) 272-3203.

A handwritten signature in black ink, appearing to read "Charles Steven Brantley", with a stylized flourish at the end.

Charles Steven Brantley
Senior Petitions Attorney
Office of Petitions